Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-337
Phase II

In the Matter of

Regulation of International
Accounting Rates

FIRST REPORT AND ORDER

Adopted: December 12, 1991; Released: December 23, 1991

By the Commission:

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I. INTRODUCTION

1. By Further Notice of Proposed Rule Making in this proceeding, 6 FCC Rcd 3434 (1991), Phase II (Phase II Further Notice), we proposed a number of additional steps as part of our continuing regulatory oversight of international settlement arrangements and our goal of lower, more economically-efficient, cost-based accounting and collection rates for common carrier services to and from the United States. In this First Report and Order we shall address one of the proposals we there enumerated, the encouragement of resale of international common carrier services as a way to exert downward pressure on current, above-cost international accounting and collection rates.

2. More specifically, we asked for comment on two resale proposals. First, we asked whether we should now require, as a matter of U.S. law, unlimited resale for all U.S. carrier-provided international telecommunications services, including international private line service, for all countries.[1] Second, we sought comment on an alternative approach that would require U.S. carriers to permit unlimited resale of all international telecommunications services only to those countries, such as Canada, the United Kingdom, Sweden and Australia, that are in the process of implementing cost-based international accounting and collection rates and have more liberal telecommunications regimes, including permitting or requiring resale of international private line and international telephone services.[2]

3. We also sought comment on a proposal by American Telephone and Telegraph Company (AT&T) to amend Section 43.51 of the Commission's Rules and Regulations, 47 C.F.R. §43.51 (1991), to require U.S. common carriers to file not only their operating agreements with their correspondents but also all international private-line interconnection arrangements to which they are parties. [3]

4. We conclude that we should adopt our alternative resale proposal to require resale of U.S. international private line services on those routes where equivalent resale opportunities are provided to U.S.-based carriers.[4] We also conclude that we should amend Section 43.51 of our Rules and Regulations to require that carriers file with the Commission any agreement for the interconnection of private lines to the public switched network (PSN).[5]

II. BACKGROUND

5. In 1976 the Commission adopted a Report and Order in Docket No. 20097,[6] in which it found that the public interest would be served by a policy of allowing unlimited resale[7] of domestic common carrier telecommunications services and found unlawful the prohibitions against resale which most U.S. common carriers then included in their tariffs for private-line service. The Commission deferred the application of its resale and shared use policy to international common carrier services until a later proceeding and, in 1980, initiated CC Docket No. 80-176.[8] In 1982 AT&T amended its International Message Telephone Service (IMTS) tariff, and in 1984 its private-line tariff, to remove its prohibitions against resale upon the obtaining of any necessary operating agreements. Because these revisions gave users access to resellable international telephone service and private lines to most overseas points, and because, over time, most other carriers followed AT&T's lead, it was unnecessary to order the removal of resale prohibitions from all international tariffs. We note, however, that a few carriers still have resale prohibitions in their international tariffs.[9]

6. International resale has taken on a new prominence, both in connection with its potential utility in exerting downward pressure on above-cost accounting rates and as a result of the recent amendment of CCITT Recommendation D.1.[10] We observe that the British Embassy filed comments in this proceeding indicating that the UK government hopes that its willingness to license international resale would lead other countries to adopt similar poli-

cies. Further, we have before us a number of applications for Section 214 authorization to resell international private lines.[11] It was to explore these issues, and because we found the record in CC Docket No. 80-176 to be stale, that our Phase II Further Notice in this proceeding again sought comment on the resale issue.

7. In response to the Phase II Further Notice, we received comments and reply comments addressed to the resale issue from the National Telecommunications and Information Administration (NTIA), the National Association of Regulatory Utility Commissioners (NARUC), the British Embassy on behalf of the government of the United Kingdom, five U.S. international service providers,[12] Pan American Satellite (PAS), a U.S. international separate satellite provider, two European carriers,[13] Teleglobe Canada Inc. (Teleglobe), the Canadian international carrier and two user representatives.[14]

III. DISCUSSION

8. After reviewing the arguments of the parties we have concluded that the public interest in cost-based international telecommunications will be served by the adoption of policies that encourage resale of international telecommunications services. In the fifteen years since we ordered unlimited resale in our *Domestic Resale Decision*, resale has substantially increased competition in the U.S. domestic telecommunications market and has yielded public benefits in terms of increased demand and reduced prices for most telecommunications services, and has virtually eliminated the possibility of price discrimination. This Commission remains convinced that the extension of unlimited resale into the international telecommunications market would yield the same public benefits in that market. We also remain convinced that unlimited international resale would yield the additional public benefit of exerting pressure to reduce above-cost international accounting rates for switched services, including IMTS.[15] Finally, we believe that the leadership role provided by the CCITT through revised Recommendation D.1 will enhance our ability to achieve these public interest benefits.[16] Indeed, we are confident that Recommendation D.1 reflects a growing recognition on the part of the international community that international resale can drive international accounting and collection rates closer to cost.

9. However, because foreign governments and administrations generally control access to their end of the international circuit and can restrict access to or resale of telecommunications services, these entities have the power to frustrate a unilateral U.S. international resale policy, and more particularly, to discriminate against U.S. carriers and users in the authorization of international resale. As a result, we believe that we must condition our resale policy to protect the U.S. public interest. We shall therefore require U.S.-based carriers to permit resale of their international private-line services only to those countries that permit equivalent resale opportunities in the return direction.

10. Specifically, we will require an applicant seeking authorization under Section 214 of the Communications Act to resell international private lines to a particular country to demonstrate that the subject country affords resale opportunities equivalent to those available under U.S. law.[17] We shall also amend Section 43.51 of our Rules to require U.S. common carriers to file not only their operating agreements with their overseas correspondents but also any arrangement for the interconnection of private lines to the PSN.

A. Public Benefits

11. At the outset it is necessary to clarify that in this decision we address resale of international private lines for the provision of telecommunications services to third parties. We do not equate resale with the interconnection of private lines to the PSN. A user can connect a private line to the PSN, even at both ends of the international circuit, for its private communications without engaging in resale. Conversely, one can engage in resale without connecting the private line to the PSN. As a result, our conclusions in this decision do not alter our long-standing policy of allowing users to attach their private lines to the PSN for their private use.[18]

12. With respect to resale of international private lines for the provision of telecommunications services to third parties, a more liberal policy will allow new entities to enter the market to offer services such as IMTS and will compel carriers at both ends of the circuit to bring their prices to cost to avoid losing their current customers to resale providers. Those who take advantage of an offering by a reseller may benefit by obtaining telecommunications service at a price lower than that charged by the underlying carrier for the equivalent service.[19] The underlying carrier could also benefit from resale in that it will derive revenues from leasing private lines to resellers.

13. As the Commission noted in CC Docket 80-176, the existence of international resale will not necessarily harm underlying carriers. While it is true that resale could cause the IMTS customers of an underlying carrier to shift to the IMTS service of a reseller, the underlying carrier does not lose revenues to another carrier in a literal sense. Rather, it is a diversion of revenues from the underlying carriers' IMTS to the same carriers' private-line services (since the reselling entity would still lease its circuits from the underlying carrier). As a result, even if the underlying carrier made no attempt to compete with the reseller, its "lost" IMTS revenues would be at least partially offset by increases in private-line revenues.

14. If underlying carriers have properly priced their private lines and their IMTS, resale should have little deleterious effect on overall carrier revenues. Because these carriers use the same international cable and satellite facilities to provide both IMTS and private-line service, their transmission costs are essentially the same whether such circuits are used for private-line or IMTS service. Underlying carriers should be able to recover much of their cost of service (including a fair return on investment) whether they use the circuits for IMTS or private-line service.[20]

15. We do not, however, anticipate that underlying carriers would be content to replace their IMTS revenues with private-line revenues, but that they will attempt to retain their IMTS customers by, *inter alia*, reducing the charges for IMTS service. If an underlying carrier were to lower its collection rates to prevent diversion of its customers to a reseller, the underlying carrier might further reduce its gross revenues in the short run. It might be argued that such a reduction would harm the carriers by reducing their IMTS revenues without reducing their costs. Experience in the United States, however, has shown that such a reduction does not lead to reduced IMTS revenues but that the lower prices stimulate greater

use and lead to increased overall revenues.[21] We have also found that this increased traffic leads to more efficient use of transmission facilities and thus to lower unit costs.

16. An additional benefit of international resale is that it will exert a downward pressure on above-cost international accounting rates. If an underlying carrier begins to lose IMTS customers to resale carriers, it will not only receive fewer IMTS revenues, it will also have fewer IMTS minutes to report in the international settlements process. To the extent that the carrier is in a net deficit position because it originates more minutes outbound than it receives inbound, a diversion of outbound calls to a reseller would reduce the outbound surplus and lower the net settlements outpayment. For an underlying carrier that originates fewer minutes outbound than it receives inbound, and thus receives a settlements payment from its correspondent, a reduction in the outbound minutes it carries would increase the net settlements inpayment. However, the underlying carrier would also receive fewer revenues from its IMTS customers and, thus, would wind up with fewer revenues overall. To the extent that the accounting rate is above cost, the underlying carrier will face a constraint on how much of a reduction in its revenues it can tolerate.[22] The underlying carrier may be forced either to take a loss on the service or raise its IMTS collection rates. If the underlying carrier were to increase its collection rates, however, the diversion of IMTS customers to the reseller would increase. Faced with such a situation, the underlying carrier would appear to have little choice but to renegotiate the accounting rate downward.

B. One-way Resale

17. In light of these positive incentives created by resale of international private lines, we turn to specific regulatory concerns that must be addressed and incorporated in a U.S. international resale policy. In our Phase II Further Notice we sought comment on how we may realize full advantage of the CCITT's efforts to provide a revised, more liberal, Recommendation D.1, while limiting the opportunity for exclusive arrangements that would discriminate against competing U.S. carriers.[23] Because the international communications market involves a cooperative effort of service providers in two different countries, the provider at the foreign end, or the government under whose jurisdiction the foreign provider operates, has the power to facilitate or impede the success of a U.S. international resale policy.

18. There is considerable concern expressed in the record over "one-way" or "unilateral resale." By "one-way" resale the parties refer to a policy by an administration at the foreign end of an international circuit to allow entities in that country to resell private lines into the United States, and to connect these private lines to the U.S. public switched network, but not to allow entities in the United States to resell private lines into that foreign country and to connect these private lines to the foreign country's public switched network.[24] C&W, for example, states that "[t]he concern expressed in [our] Phase II Further Notice, . . . that unilateral resale can be used to evade accounting rates, is plainly a legitimate concern."[25] NTIA observes that "one-way service arrangements connecting to the public switched network in the United States pose serious threats to U.S. consumer rates, U.S. outpayments, and the promotion of long distance competition."[26] Norwegian Telecom was the only party that did not advocate limiting international resale to avoid "one-way" resale.[27]

19. We agree with the parties that "one-way" resale would give overseas administrations the incentive and the power to use such resale to evade the international settlements process or otherwise discriminate against competing U.S. carriers. If the foreign government were to allow resale to the United States but not allow resale from the United States, only users and service providers in that foreign country would benefit from the resale. Traffic diverted from U.S. carriers would reduce the number of minutes that the foreign correspondent would report under the international settlements process. Since equivalent resale would not be available from the United States, the U.S. carrier's outbound traffic volumes would remain unchanged. The result would be that the already significant U.S. net settlements deficit would increase, ultimately increasing the burden on U.S. ratepayers through, for example, higher rates. Such a lop-sided effect would not benefit U.S. consumers. In light of these circumstances, we conclude that "one-way" resale would be detrimental to the U.S. public interest.

20. Instead of requiring unlimited resale of international private lines to provide basic telecommunications services to all countries, we agree with the parties that we should require that U.S. carriers permit resale only on those routes where the foreign government affords equivalent resale opportunities. Both U.S. carriers and the representatives of foreign governments or carriers emphasize the importance of implementing resale at both ends only to those countries whose regulatory regimes allow a "broadly equivalent freedom"[28] or have "similarly liberal telecommunications regimes."[29] We believe that, to the extent that equivalent resale opportunities exist, any short-run traffic diversions will fall evenly on both correspondents. Moreover, both correspondents will have the same opportunity to respond to the reseller to attempt to retain their customers. Under these circumstances, the effects of resale, as well as the opportunities to receive the benefits of reduced rates and increased traffic volumes, will be equitably shared.

C. Equivalent Resale Opportunities

21. Having decided that resale of international private lines will yield public benefits, and that we should require resale only on those routes that afford equivalent resale opportunities, we turn to the issue of determining whether equivalent resale opportunities exist with a particular country. We shall require an applicant seeking authorization under Section 214 of the Communications Act to resell an international private line for the purpose of providing a basic telecommuncations service to a particular country to demonstrate that that country affords resale opportunities equivalent to those available under U.S. law. An applicant can satisfy this requirement by including in its Section 214 application: 1) a statement that the Commission has publicly determined that equivalent resale opportunities exist between the United States and the subject country;[30] or 2) other evidence demonstrating that equivalent resale opportunities exist between the United States and the foreign country, including any relevant bilateral agreements between the administrations involved.[31]

22. We will analyze each Section 214 application on a case-by-case basis to determine whether equivalent resale opportunities exist with a particular country. Communications markets and physical telecommunications infrastructures vary widely from country to country and are subject to change over time. Therefore, we decline to adopt NTIA's suggestion that we develop and issue "criteria" of openness to determine whether equivalent resale opportunities exist.[32] A demonstration of equivalent opportunities through a showing in a Section 214 application may include a wide range of issues. Parties may address issues such as: (1) licensing; (2) tariffing; and (3) other terms and conditions associated with the provision of service.[33] On the other hand, we expect, at a minimum, that equivalent resale opportunities will include open entry for, and nondiscriminatory treatment of, U.S.-based carriers.[34] In particular, we believe that primary importance must be given to ensuring that all U.S.-based carriers may provide service on price, terms and conditions equivalent to those afforded foreign-based competitors, including those competitors that have an ownership interest in, or sufficiently close corporate relation with, a carrier that either holds some form of privileged access to that country or exercises control over bottleneck facilities.

D. Regulatory Treatment

1. U.S. Carrier Tariffs

23. In view of our decision to require resale to countries where equivalent resale opportunities exist, we conclude that a carrier's tariffs should reasonably inform the user what it can and cannot do with the tariffed services.[35] We do not think that the resale provisions currently appearing in U.S. carriers' international private-line tariffs adequately reflect the policy we adopt in this proceeding. For example, a few carrier tariffs prohibit resale,[36] while others state that a user may resell private lines subject only to the possibility that a foreign government may require an operating agreement.[37] We shall thus require carriers to amend their tariffs for international private line services to track more closely the international resale policy we adopt in this decision. In particular, we shall require that a carrier's tariff explicitly state our policy that the user may engage in resale of the international private line for the provision of a basic telecommunication service upon authorization from the Commission under Section 214 of the Communications Act of 1934,[38] and that such authorization will be granted only to countries where the applicant can demonstrate that the foreign government or administration affords equivalent resale opportunities. To meet this requirement, carriers may wish to insert the following language:

> International private line service obtained from this tariff for the purpose of resale for the provision of third party services requires authorization from the Federal Communications Commission and a demonstration that the foreign government or administration affords equivalent resale opportunities.

Carriers will be required to amend their international private line tariffs within ten days after publication of this decision in the Federal Register.

2. Section 214 Certification

24. Because resale is a common carrier activity,[39] a user wishing to resell international private lines for the provision of a basic telecommunications service must first obtain certification as an international common carrier under Section 214 of the Communications Act. All Section 214 certificates for the resale of international private lines will be subject to the condition that the authorization may be subject to possible revocation or modification as a result of a finding by this Commission that equivalent resale opportunities do not exist between the United States and the subject country. Moreover, pursuant to our 1985 *International Competitive Carrier* decision,[40] we shall require a carrier, whether classified as dominant or non-dominant, to obtain Section 214 certification for each country to which it seeks to resell a private line, even if the carrier has previously been certified to serve such country through resale of switched services or through the acquisition of facilities. We will require dominant international resale carriers to obtain a Section 214 authorization for all circuit additions to certificated points.[41] Non-dominant international resale carriers will be required to file semi-annual reports of circuit additions to certificated points.[42] Finally, we note that we are, in a separate proceeding,[43] reviewing our *International Competitive Carrier* policy on the classification of international carriers, including resellers.

3. Reporting Requirements

25. After reviewing the comments of the parties, we have also concluded that we should, as requested by AT&T, amend Section 43.51 of our Rules to require U.S. carriers to file not only their operating agreements with their correspondents but also any arrangements for interconnections of private lines to the U.S. public switched network. We generally agree with AT&T that such a notification is needed to ascertain whether a carrier is using resold private lines to provide basic services in a way that would undermine Commission policies. We are not prepared at this time, however, to require the broad filing requirement proposed by AT&T in its October 12, 1990, comments in this proceeding. We agree with the User Coalition that the AT&T proposal is too broad and that it could unnecessarily sweep into it a large variety of arrangements for which we do not see a need for review and that such a requirement could burden users unduly.

26. In its reply comments in this proceeding, however, AT&T clarified that it does not now seek to require users to notify the Commission of private line interconnection arrangements, but only carriers. We interpret AT&T's clarification to seek notification only of connections where a U.S. carrier (or an affiliate) makes the connection for itself, an affiliate or another carrier. In this context, we believe that such a requirement would not be unduly burdensome. Thus, we will require that arrangements for carrier private line interconnection to the U.S. public switched network be filed under Section 43.51(a) of our Rules, 47 C.F.R. § 43.51(a). We do not, however, see a need to adopt AT&T's proposal that we place these interconnection filings on public notice and provide a period for filing oppositions. The filing of these arrangements should be sufficient to determine whether carriers are reselling international private lines without appropriate Section 214 certification or otherwise undermining Commission policies. A violation of our international resale policies may be challenged at any time by either

the Commission or an interested person. But we have ample authority through, for instance, Sections 312(b) and 503 of the Communications Act and our international settlement policies, to take corrective action for violations of our decision herein that resale should occur only on routes that afford equivalent resale opportunities.

IV. CONCLUSION

27. In this First Report and Order we have taken steps in our regulatory oversight of international settlement arrangements to encourage the resale of international private lines to countries where equivalent resale opportunities exist. We believe that this action appropriately balances our interest in limiting opportunities for discrimination against competing U.S. carriers while encouraging the implementation of lower, more economically efficient, cost-based international accounting rates and international calling price reductions for U.S. consumers.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 1, 4, 201-205, 211, 214, 218-220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201-205, 211, 214, 218-220, and 303, Parts 43 and 63 of the Commission's Rules, 47 C.F.R. Parts 43 and 63 ARE AMENDED as set forth in Appendix B below.

29. IT IS FURTHER ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

30. IT IS FURTHER ORDERED that U.S. carriers shall amend their tariffs, detailed in paragraph 23 above, within ten (10) days after publication of this decision in the Federal Register.

31. IT IS FURTHER ORDERED that all other provisions in this *First Report and Order* not detailed in paragraph 23 above will be effective 90 days after publication of this decision in the Federal Register.

32. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau is delegated to act on matters pertaining to implementation of the policies, rules, and requirements as set forth herein.

33. For further information on this item contact John Copes, Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632-3214.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

COMMENTS:

1. Computer Software and Services Industry Association (ADAPSO)
2. American Telegraph and Telephone Company (AT&T)
3. Atlantic Tele-Network, Inc. (ATN)
4. Government of the United Kingdom (through British Embassy)
5. Cap Cities/ ABC, CBS & NBC (Cap Cities)
6. Caribbean Association of National Telecommunications Organizations (CANTO)
7. Cable and Wireless Communications, Inc. (C&W)
8. GTE Telephone Companies (GTE)
9. MCI Telecommunications Corporation (MCI)
10. Mercury Communications (Mercury)
11. National Association of Regulatory Utility Commissioners (NARUC)
12. Norwegian Telecom International (Norwegian Telecom)
13. National Telecommunications and Information Administration (NTIA)
14. Pan American Satellite (PAS)
15. Teleglobe Canada Inc. (Teleglobe)
16. Televerket/Swedish Telecom Group (Televerket)
17. TRT/FTC Communications, Inc. (TRT/FTCC)
18. US Sprint Communications Company, L.P. (US Sprint)

REPLY COMMENTS:

1. AT&T
2. The Coalition of International Telecommunications Users (User Coalition)
3. GTE
4. Guyana Telephone and Telegraph Ltd. (GT&T)
5. MCI
6. NTIA
7. Telepuertos San Isidro, S.A. (TRICOM)
8. Televerket
9. Telecommunications Services of Trinidad and Tobago Limited (TSTT)
10. TRT/FTC
11. US Sprint

APPENDIX B

Title 47 of the Code of Federal Regulations, Parts 43 and 63, are amended as follows:

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (a) to read as follows:

§ 43.51 Contracts and Concessions

(a) Any communications common carrier engaged in domestic or foreign communications, or both, which has not been classified as non-dominant pursuant to § 61.3 of the Commission's Rules, 47 CFR § 61.3, is not treated under the regulatory forbearance policies established by the Commission, and which enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point, must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) the exchange of services;

(2) except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances;

(3) the interconnection of a private line to the United States' public switched network when such private line is used for foreign communications; and

(4) the rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operations.

1. The authority citation for Part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.01 is amended by adding subparagraph (k)(5) to read as follows:

§ 63.01 Contents of Applications

(k)(5) The procedures set forth in this subsection are subject to Commission policies on resale of international private lines in CC Docket No. 90-337. If proposed facilities are to be acquired through the resale of private lines for the purpose of providing international services, applicant shall demonstrate for each country to which it seeks to provide service that that country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicant shall:

(i) state whether the Commission has previously determined that equivalent resale opportunities exist between the United States and the subject country; or

(ii) include other evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral agreements between the administrations involved. Parties may address such issues as: (1) licensing; (2) tariffing; and (3) other terms and conditions associated with the provision of service.

APPENDIX C
PROCEDURAL MATTERS

Final Regulatory Flexibility Analysis

I. Need and purpose of this action:

This Phase II First Report and Order of CC Docket No. 90-337 takes steps to encourage the resale of international private lines to countries where equivalent resale opportunities exist, while limiting opportunities for discrimination against competing U.S. carriers. The steps taken herein will further the Commission's goal of promoting lower, more cost-based, economically efficient international accounting rates and reductions in international calling prices to U.S. consumers.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected:

The Commission considered requiring unlimited resale of international private lines to all countries. The Commission decided, however, that it should limit requiring resale of international private lines only to countries where equivalent resale opportunities exist. This action provides for the Commission flexibility to deal with potential anticompetitive consequences that would result from, for example, where a foreign country permits a reseller of an international private line to interconnect that private line to the U.S. public switched network but does not permit a reseller of a private line from the United States to connect that private line to the public switched network of the foreign country.

The Commission considered developing and issuing "criteria of openness" to assess whether equivalent resale opportunities exist with a particular country. The Commission decided, however, that because communications markets and physical telecommunications infrastructures vary widely from country to country and are subject to change over time, the Commission should analyze each Section 214 application for authority to resell private lines to a particular country on a case-by-case basis to determine whether equivalent resale opportunities exist.

FOOTNOTES

[1] In this connection, we stated that we would not permit operating agreements between U.S. carriers and their overseas correspondents to apply resale prohibitions imposed by overseas governments or carriers. *See* 6 FCC Rcd at 3437, n. 33. We further proposed to direct the Common Carrier Bureau to review operating agreements and to declare any such provisions null and void.

[2] *Id.* at 3437.

[3] *See id.*, n. 34.

[4] We note that we have authorized U.S. carriers to provide telecommunications services by resale of international switched services, including international message telephone service, since 1980. *See* ITT World Communications, Inc. v. Consortium Communications International, 76 FCC 2d 15 (1980). We note that none of the parties in this proceeding objected to unlimited resale of international switched services. Moreover, the concerns about the negative impact of one-way resale, *see infra* paras. 17 through 20, do not apply to switched services. Therefore, we shall require U.S. carriers to permit unlimited resale of all their international switched telecommunications services. The remainder of this decision addresses the resale of international private lines.

[5] In this decision we address the issues associated with international resale. The other issues raised in our Phase II Further Notice will be dealt with in a subsequent decision.

[6] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *reconsid.* 62 FCC 2d 588 (1977), *aff'd sub nom. American Telephone and Telegraph Company v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) [hereafter cited as *Domestic Resale Decision*].

[7] That decision defined resale as "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without 'adding value') for profit." 60 FCC 2d at 271.

[8] 77 FCC 2d 831 (1980). Pursuant to a delegation of authority in our Phase II Further Notice, the Chief, Common Carrier Bureau, on December 10, 1991, terminated that proceeding. *See* Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services, CC Docket No. 80-176 (Com. Car. Bur., adopted December 10, 1991).

[9] *See* , *e.g.*, Western Union International, Inc., Tariff FCC No. 27, Sections 1.3.1.1 and 1.3.3.1, original pp 9 and 11 (effective April 1, 1990).

[10] Recommendation D.1 "sets out the general principles and conditions applicable to international (continental and intercontinental) private leased telecommunication circuits and networks . . . for the establishment, operation, and use of international private leased telecommunication circuits." We note that our use of the term international private lines in this decision is what the CCITT refers to as "international private leased circuits."

Prior to the 1991 revision, Recommendation D.1 contained a presumption against using international private lines other than for the customer's internal communications. Section 1.7, for example, provided that:

> [w]ithin the limits fixed by Administrations in each case, private leased circuits may be used only to exchange communications relating to the business of the customer.

Furthermore, Section 7.3.1 stated that:

> [a]ccess to the public telephone network may be allowed at one or the other terminals of the circuit, but not simultaneously at both terminals . . . .

Recommendation D.1, however, provided that the Administrations (service providers) providing the private leased circuit could exceptionally agree to allow resale or interconnection at both terminals. *See* International Telecommunication Union (ITU), International Telephone and Telegraph Consultative Committee (CCITT), CCITT Recommendation D.1, "General Principles for the Lease of International (Continental and Intercontinental) Private Telecommunication Circuits, Sections 1.7 and 7.3.1, Geneva (November 1988).

Revised Recommendation D.1, on the other hand, contains no such negative presumption. Section 3.1.1 of the current D.1 provides that, in addition to using the private line for its internal communications, a "customer may [use such circuit to] provide international telecommunication services" and Section 4.1 provides that:

> [t]he interconnection of an international private leased telecommunication circuit . . . may be permitted simultaneously at both terminals of the circuit . . . if agreed between the Members [*i.e.*, the governments, rather than the service providers] concerned . . . .

See ITU, CCITT, Access to Public Networks, Revised CCITT Recommendation D.1, "General Principles for the Lease of International (Continental and Intercontinental) Private Telecommunication Circuits and Networks, Sections 3.1.1 and 4.1, Geneva (May 1991).

[11] *See, e.g.*, Applications of Litel Telecommunications Corporation, File No. I-T-C-90-028; Cable and Wireless Communications, Inc., File No. I-T-C-90-190; Eastern Microwave, Inc., File No. I-T-C-91-050; and fONOROLA Corporation, File No. I-T-C-91-103.

[12] AT&T, MCI Telecommunications Corporation (MCI), U.S. Sprint Communications Company (Sprint), TRT/FTC Communications, Inc. (TRT/FTCC), and Cable and Wireless Communications Inc. (C&W).

[13] Norwegian Telecom International (Norwegian Telecom) and Televerket (Swedish Telecom Group) (Televerket).

[14] ADAPSO, The Computer Software and Services Industry Association (ADAPSO) and the Coalition of International Telecommunications Users (Citicorp, Electronic Data Systems Corporation, General Electric Communications and Services, and International Business Machines Corporation) (User Coalition). ADAPSO has since changed its name to Information Technology Association of America. For a complete list of the comments filed to the Phase II Further Notice, *see* Appendix A.

[15] Regulation of International Accounting Rates, Notice of Proposed Rule Making, 5 FCC Rcd 4948, 4950 (1990).

[16] Article 3.1.3 of Recommendation D.1 provides that,

> [s]ubject to national laws [of the countries involved] the customer [*i.e.*, user of an international private line] may . . . provide international telecommunications services using an international private leased telecommunications circuit [*i.e.*, private line] . . . .

Article 4.1 of Recommendation D.1 provides that,

> [t]he interconnection of international private [lines] or international private [line] networks with public networks at only one [end] should be permitted subject to national laws [and] . . . may be permitted simultaneously at both [ends] if agreed between the Members concerned ....

Recommendation D.1, at Articles 3.1.3. and 4.1.

[17] We note that enhanced service providers are not required to obtain certification under Section 214 to provide enhanced services over international private lines.

[18] We note that the UK government, on the other hand, defines "international simple resale" (presumably, as contrasted with enhanced or value-added resale) in terms of connecting an international private line to the PSN at both ends. While we do not regard PSN connection as defining resale, we recognize that the ability to connect to the PSN, particularly the ability to connect at both ends of the private line, is important to the successful offer of resale services. Indeed, for switched services such as IMTS, it is difficult to see how resale could be successful without the ability to connect the private line to the PSN at both ends. This Commission has, since 1976, allowed connections to the PSN at both ends for domestic resale. Therefore, subject to the international private line resale policies we adopt in this decision, we shall also require U.S. carriers to permit international resale carriers to connect international private lines to the U.S. public switched network.

[19] Carriers owning transmission facilities from whom resale entities obtain communications service shall be referred to as "underlying carriers."

[20] In this connection, we note the argument of C&W that resale could cause carriers to increase the charges for private lines if they are unreasonably low in relation to the charges for the services the reseller is providing over the resold private line. As we have made clear on many occasions, we favor charges for service that are based on cost. If a carrier has set private-line charges below cost of service, that means it must recover those costs from the customers of other services such as IMTS. Such a cross-subsidy could represent a discrimination against the customers providing the revenues for the subsidy.

[21] For example, interstate long distance service traffic volumes have grown at an annual rate of 12 percent, more than doubling usage of the interstate switched network since 1984. Moreover, revenues have increased substantially despite reductions in calling prices of more than 40 percent. *See* "Trends in Telephone Service," Industry Analysis Division, FCC (August 7, 1991).

[22] For example, a carrier with a net outbound traffic flow would weigh a reduction in its revenues against its ability to meet its obligation to settle its account (outpayment) with its foreign correspondent.

[23] Phase II Further Notice, 6 FCC Rcd at 3437.

[24] Underlying the argument of the parties concerning "one-way" resale is an assumption that the reseller would operate at both ends of the international private line -- or, in traditional IMTS terms, that the reseller in the United States would act as its own correspondent at the other end of the international circuit. Under such circumstances, the parties assume that the reseller would not need to enter into an operating agreement or to settle its traffic account under an agreed and uniform international accounting rate. We note, however, that on February 5, 1990, AT&T filed a petition for declaratory ruling seeking, *inter alia*, a Commission determination that U.S.- based carriers must comply with the Commission's International Settlements Policy when providing "an IMTS option" over an international private line. *See* AT&T Petition for Expedited Declaratory Ruling, CC Docket 86-494 (February 5, 1990). We do not resolve this issue here.

[25] C&W Comments at 12, n. 11. For this reason, C&W advocates only "bidirectional" international resale. *See also* Comments of AT&T, MCI, NARUC, NTIA, and Sprint. The UK government made clear in its comments that it too is concerned that diversion of UK revenues would result from one-way resale. It stated that it would therefore allow international resale only to those countries that also allow it. In addition, Teleglobe notes that the government of Canada allows international resale only to countries that allow such resale in the reverse direction. Teleglobe comments at p. 8. Televerket notes in its comments, p. 10, that the government of Sweden is also considering the liberalization of international resale, but only to countries that have similarly liberal telecommunications regimes.

[26] NTIA Reply Comments at 14.

[27] While not addressing specifically the issue of one-way resale, Norwegian Telecom argued that international resale can be of benefit only if it is authorized not only to countries that have acted to bring collection and accounting rates to cost but also to other countries with less liberal regimes. It does not, however, discuss how such a policy would be implemented to a country that opposed the introduction of resale.

[28] British Embassy Comments at 3.

[29] Swedish Telecom Comments at 10.

[30] Such a determination may, for example, be evidenced by a public notice issued by this Commission or in a Section 214 certificate previously granted to another carrier. Moreover, we note that we will continue to monitor whether a foreign country affords, in fact, equivalent resale opportunities after a Commission determination. Thus, we may require international resale carriers to file additional information necessary for monitoring purposes. If circumstances in the future indicate that equivalent resale opportunities no longer exist with a particular country, we will be prepared to take appropriate regulatory action to ensure that our international resale policies are not frustrated.

[31] We have established a new subsection under Section 63.01 of our Rules, 47 C.F.R. § 63.01(k)(5) to reflect this requirement, *see* Appendix B.

[32] NTIA Reply Comments at 15.

[33] In this connection, AT&T notes that other countries limit market entry to only one or two service providers. *See* AT&T Reply Comments at 18-19. *See also* Sprint Reply Comments at 6. US Sprint argues that we should consider information regarding foreign termination, access and non-recurring costs. *See* US Sprint Comments at 17. US Sprint also argues that we should consider the length of time it takes to obtain a private line for resale purposes. *Id.* MCI states more generally that we should require, as a matter of U.S. law, unrestricted resale of international private lines for all U.S. carriers provided that the arrangement permits reciprocal public switched interconnection in the foreign country. *See* MCI Comments at 14.

[34] In this context, an equivalent resale opportunity would include the ability for a user to connect an international private line to the PSN at both ends of the international circuit.

[35] All carriers, whether dominant or non-dominant, are required to file tariffs with this Commission for international basic telecommunications services.

[36] *See supra* note 9.

[37] *See, e.g.*, AT&T Tariff F.C.C. No. 9, Section 2.2.3.A.

[38] We note that enhanced service providers are not required to obtain certification under Section 214 to provide enhanced service over international private lines. *See supra* note 17.

[39] *Domestic Resale Decision*, 60 FCC 2d at 308.

[40] International Competitive Carrier Carrier Policies, 102 FCC 2d 812 (1985), *recon. denied*, 60 Rad. Reg. 2d 1435 (1986).

[41] 47 C.F.R. § 63.01.

[42] 47 C.F.R. § 63.10.

[43] Regulation of International Common Carrier Services, Notice of Proposed Rule Making, _____ Docket No. 92-_____, FCC 92-_____ (adopted December 12, 1991).